110-225

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 1144.

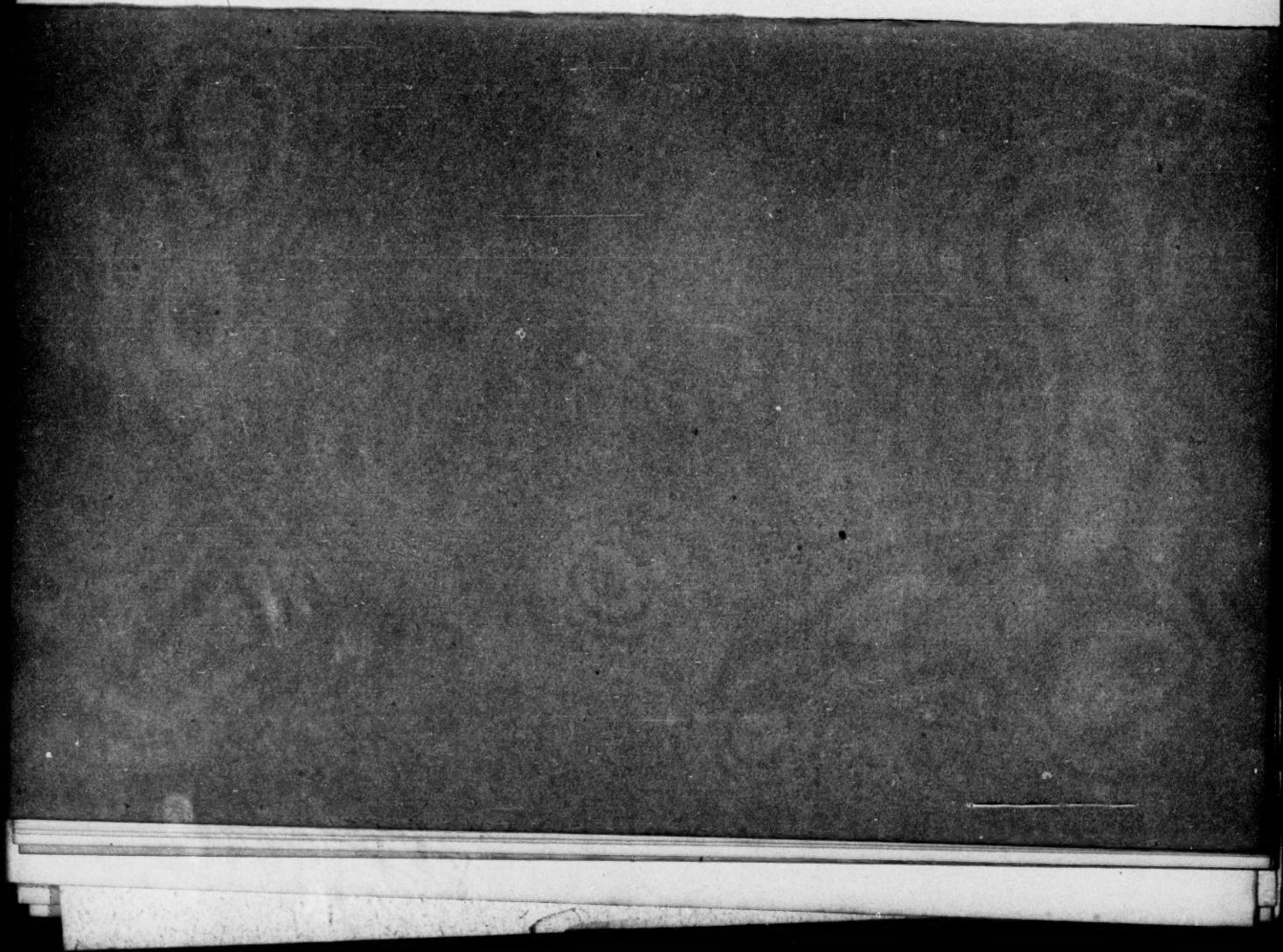
THE UNITED STATES, APPELLANT,

vs.

ALBERT GRANT, SURVIVING PARTNER OF ALBERT GRANT AND DARIUS C. JACKSON, DOING BUSINESS UNDER THE NAME OF A. GRANT & CO.

APPEAL FROM THE COURT OF CLAIMS.

FILED OCTOBER 13, 1883.



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1 I. *Petition.—Filed Dec.* 2, 1868.

In the United States Court of Claims.

A. GRANT & CO.
v.
THE UNITED STATES.

The petitioners, Albert Grant and Darius C. Jackson, citizens of the United States, heretofore doing business under the firm-name of A. Grant & Co., by this their petition respectfully show:

That on the 13th day of April, A. D. 1867, they made and entered into a contract with the United States, acting in that behalf by G. H. Crosman, Assistant Quartermaster-General of the United States Army, to furnish the materials and erect a fire-proof store-house in the city of Philadelphia, and that the said contract is in the words and figures following, to wit:

"This contract made and entered into this thirteenth day of April, one thousand eight hundred and sixty-seven, between A. Grant, of the city of Washington, D. C., and D. C. Jackson, of the city of Milwaukee, State of Wisconsin, associated in business under the name and firm of A. Grant & Co., as principals, and Samuel P. Brown, and William E. Spaulding, of the city of Washington, D. C., as sureties of the first part, and the United States by Bvt. Brig. General George H. Crosman, Assistant Quartermaster-General, U. S. A., acting under the authority of the War Department, for and in their behalf of the second part, witnesseth:

"That the said parties of the first part do hereby contract and engage with the United States as follows: That in consideration of the payments hereinafter mentioned, the parties of the first part hereby contract and agree with the said United States to furnish, at their own risk and expense, all the materials and work necessary for a fire-proof store-house and its appurtenances upon the lot of ground on the Schuylkill River, in the city of Philadelphia, belonging to the United States, and used for the purposes of an arsenal, and finish and complete the same according to the plans and specifications heretofore annexed, which form a part of this contract; said store-house to be entirely completed, ready for occupation, and delivered to the party of the second part on or before the thirteenth day of March, one thousand eight hundred and sixty-eight.

"And the said parties of the first part further agree that the
2 party of the second part shall be, and is hereby, authorized to deduct and retain, out of any money which may become due to the parties of the first part under this agreement, the sum of fifty (50) dollars per day for each and every day, Sundays and holidays only excepted, that the aforesaid work may be incomplete and unfinished beyond the time hereinbefore stipulated for its completion.

"And it is further mutually agreed by the parties to this contract that all the materials furnished and work performed shall be of the quality described in said specifications, and subject to the inspection, approval, or rejection of John McArthur, jr., or such other architect as may be employed by the United States, and of Bvt Brig. General Geo. H. Crosman, on the part of the United States, who shall have full power to reject any

materials or workmanship which, in the opinion of said architect and of said Assistant Quartermaster-General, or of either of them, are not of the best quality; and all rejected work and materials shall be immediately removed from the premises.

"And the said parties of the first part do further engage and contract that no member of Congress, officer of the Army or Navy, or any person holding any office or appointment under the War Department, shall be admitted to any share or part of this contract or agreement, or to any benefit to arise therefrom. And it is hereby expressly provided, and this contract is upon this express condition, that if any such member of Congress, officer of the Army, or other person above named, shall be admitted to any share or part of this contract, or to any benefit to arise under it, or in case the parties of the first part shall in any respect fail to perform this contract on their part, the same may be, at the option of the United States, declared null and void, without affecting their right to recover for defaults which may have occurred.

"And the parties of the first part hereby contract and agree that for the full and entire completion of this contract, to the satisfaction of the parties of the second part, there shall be paid to the parties of the first part by the parties of the second part the sum of one hundred and thirty-eight thousand ($138,000) dollars; said sum to be paid as the work progresses, in six separate and distinct payments, pro rata as follows, namely: Twenty-three thousand ($23,000) dollars, subject to a deduction of ten per cent., which amounts to twenty thousand seven hundred ($20,700) dollars, when the whole of the first-floor beams are laid; twenty-three thousand ($23,000) dollars, subject to a deduction of ten per cent., which amounts to twenty thousand seven hundred ($20,700) dollars, when the whole of the second-floor beams are laid; twenty-three thousand ($23,000) dollars, subject to a deduction of ten per cent., which amounts to twenty thousand seven hundred ($20,700) dollars, when the whole of the third-floor beams are laid; twenty-three thousand ($23,000) dollars, subject to a deduction of ten per cent., which amounts to twenty thousand seven hundred ($20,700) dollars, when all the walls are laid to the square and made ready to receive the roof; twenty-three thousand ($23,000) dollars, subject to a deduction of ten per cent., which amounts to twenty thousand seven hundred ($20,700) dollars, when the roof is entirely complete; and a final payment of thirty-five thousand three hundred ($35,300) dollars (which includes all deductions and retentions of ten per cent. on previous payments), when the whole building is completed to the entire satisfaction of the supervising architect and officer of the United States Quartermaster's Department; making, in all, the full and entire amount of one hundred and thirty-eight thousand eight hundred ($138,800) dollars.

"It is distinctly understood that the true intent and meaning of
3 this contract is that the parties of the first part are to furnish all the materials and perform all the work necessary to render the buildings and appurtenances perfect and complete in every respect, according to the plans and specifications annexed, whether expressed in the same or not; and no extra charge for modifications will be allowed, unless such modifications are agreed upon in writing by the parties; and no changes or modifications, mutually agreed upon by the parties to this contract, shall in any way affect its validity.

"And it is further agreed, that if the parties of the first part shall fail to complete this contract at the time or in the manner specified, to the satisfaction of the party of the second part, then the party of the second part shall have full power to enter upon and complete the work, at the expense of the parties of the first part.

"And it is further agreed that this work, contracted for by the parties of the first part, shall be commenced by them on or before the fifteenth day of April, 1867.

"In witness whereof the parties of the first part and Bvt. Brig. General Geo. H. Crosman, Assistant Quartermaster-General, U. S. A., in behalf of the party of the second part, have hereunto set their hands and seals, on the day first above written.

(Signed) "ALBERT GRANT. [SEAL.]
"DARIUS C. JACKSON, [SEAL.]
"G. H. CROSMAN, [SEAL.]
"*Asst. Q. M. Gen., U. S. A.*

"Witnesses:
"EDWIN NORTH.
"JOHN RORMRAL.
"A. W. CLARKE."

The specifications referred to in said contract are appended hereto, and are marked "Exhibit A.'.

In pursuance of the said contract they commenced the said building on the 15th day of April, 1867, and completed the same, to the entire satisfaction of the supervising architect and officer of the United States Quartermaster Department, and in accordance with the plans, specifications, and the said contract, except as to the variations and changes made at the request of the defendants as hereinafter stated, and that the said building was fully completed before the 13th day of March, 1868, except as to some minor parts, which were left unfinished until the return of warm weather, at the special request of the defendants.

They futher show that the said building has now been fully completed, and has been fully approved and accepted by the said defendants, and is now in their use and occupation.

That during the progress of the said building, and from the commencement to the close thereof, they were contumaciously and unreasonably interfered with, hindered, and delayed by the defendants, in their work in fulfilling the said contract. And your petitioners, in consequence of such unreasonable interferences and delays, suffered damage in a large sum of money, to wit, the sum of twenty-seven thousand six hundred dollars ($27,600).

The petitioners further show that during the progress of the said building the defendants requested them, the petitioners, to depart materially in the construction thereof from the plans originally prescribed for the same, and requested them to use different materials from and more expensive than those prescribed by the contract and specifications, and in greater quan-

4 ities. That in making said changes and alterations, so requested as aforesaid, they furnished great quantities of extra materials, and performed great extra labor over, and in addition to, the requirements of the said contract and specifications, at great additional expense to them, and greatly in excess of what it would have cost them to con-

struct said building according to the plans and specifications originally contracted upon. That the said departures and alterations were made, the said extra work was done, and the said extra materials were furnished for the defendants, and at their special instance and request, and the said defandants agreed to pay therefor to the petitioners so much as the same were reasonably worth, and your petitioners say that they were reasonably worth the sum of forty thousand four hundred and ninety-six dollars and sixty-nine cents ($40,496.69).

Your petitioners further say that the said extra labor, and the said extra materials were duly agreed upon by the parties to said contract before said extra materials were furnished, extra labor was done, and the said defendants agreed to pay for the same.

They further show that the defendants have paid the contract price for the said building, completed as aforesaid, but have neglected and refused to pay for the said extra labor and materials (except as hereinafter stated), and for the said damages, although often requested so to do. That there is now justly due to the petitioners from the said defendants for extra labor performed and for extra materials furnished, as aforesaid, in and about said building, at the defendant's request, over and above the contract price thereof, and for their damages for said unreasonable interferences and delays, as follows, to wit:

For taking up 70 feet of concrete footing, laid in accordance with the specifications, and relaying the same	$260 00
For grouting all the footings with clear cement without sand or lime, whereas the specifications required only concrete made with cement and broken bricks or stone—difference...	1, 265 00
For 75 stones placed in walls for iron beams to rest upon, required by specifications to be 8 by 12, taken out and replaced by stones 8 by 24, and then again changed to 8 by 12, by the direction of the defendants	112 50
For plastering cellar, one coat, not required by contract.....	300 00
For laying four-inch projection, and filling up, with brick between the rafters around the entire building, not required by contract, being 950 feet at $2 per foot	1, 900 00
For increasing the thickness of all the brick floors 2½ inches beyond the requirements of the specifications, being 397 perches of brick-work grouted with pure cement	6, 947 50
For filling all the haunches of arches level with the crown, with brick grouted with pure cement, instead of common concrete, by filling the same with brick spalls, or coarse gravel and common mortar, as prescribed by the specifications, equal in all to 397 perches	3, 374 50
For laying 369,380 bricks in floor arches in mortar composed of ⅔ cement and ⅓ sand, instead of cement, lime, and sand, in equal parts, as required by the specifications, being difference in extra labor and extra materials	1, 846 90
For laying foundation of brick floor in basement four inches thick, grouted with pure cement over surface, instead of laying same on common gravel mortar, as required in specifications	3, 570 00
For making material alterations in, and additions to, the plans	

and specifications as to the roof of said building, necessitated by the removal of the attic floor, such as putting in double rods accross the building, costly fastenings therefor, bolts, struts, or iron braces, long rods through purline and pieces of gas-pipe; also for increase of the surface of the roof 7 by 56 feet to cover altered hip projections on the east, west, and north sides of said building, together with iron supporters and braces for the same	13,938	84
For making scuttles in iron roof, not required by the specifications	75	00
For making division walls from the bottom of the roof to the ridge (gable walls), not required by the contract or specifications	1,080	00
For making chimney tops of cut stone	96	00
For putting in transom window plates, with iron sash, instead of plain plates of iron	100	00
For taking up and relaying "belt course," including both stone and brick	1,000	00
For putting long bolts in walls, for the purpose of fastening the roof of a "center building," hereafter to be built	137	00
For changing iron girders	30	00
For building brick walls adjoining old building	342	00
For making gutters of copper, instead of iron, difference	3,608	25
For cutting holes and putting in iron eyes, for hoisting machine, not required by contract	200	00
For putting in extra iron beams in west stairway, and around hatchways, north and south flanks, 2,610 pounds iron, at 12 cents per pound	313	20
For damages sustained by plaintiff in consequence of unreasonable interferences, hindrances, and delays, caused by defendants	27,600	00
	68,096	69
Deduct amount allowed by defendants for extra work and extra materials	2,286	30
Balance due petitioners	65,811	39

The petitioners further show that they caused this claim to be presented to the Quartermaster-General's Department heretofore, and that the same was rejected, except as to the said sum of $2,285.30, which was allowed and paid.

That the said partnership has been dissolved, and that the said petitioner, Darius C. Jackson, has assigned and transferred all his right, title, and interest, in and to said claim, to the petitioner, Albert Grant; and, further, that the said Albert Grant has assigned the said claim (except $4,000 thereof) to the National Exchange Bank of Philadelphia, as security for the payment of about $7,000, due from said firm to said bank; and that the said Grant is the sole owner of said claim except as above stated; that the said petitioners have at all times borne true allegiance to the United States Government, and that they have not, and neither of

them has, at any time or in any way, voluntarily aided, abetted, or given encouragement to the rebellion against said Government.

A. GRANT.

ENOCH TOTTEN,
Counsel for claimant.

6 DISTRICT OF COLUMBIA,
County of Washington, ss:

Albert Grant, being first duly sworn, doth depose and on his oath say that he is one of the claimants named in the foregoing petition; that he is the sole owner of the claim therein specified except as therein noted; that no assignment or transfer of said claim, or any part thereof, or any interest therein has been made except as therein mentioned; that he is justly entitled to the amount claimed in said petition from the United States, after allowing all just credits and offsets, and that he believes the facts stated in said petition are true.

A. GRANT.

Subscribed and sworn to before me this 18th day of November, A. D. 1868.

[SEAL.] JOHN F. CALLAN,
Commissioner Court of Claims.

EXHIBIT A.

Specification of materials and workmanship designed to be used in the erection and construction of a storehouse, with its appurtenances, at the United States Arsenal, on Gray's Ferry road, Philadelphia.

The new building is to occupy that portion of the ground immediately in the rear of the present building, known as building No. 3, and to be joined to it as shown on the drawings; the entire building, with all its appurtenances, to be in strict accordance with the plans, elevations, and sectional drawings of John McArthur, jr., architect, and approved by the Quartermaster-General of the United States Army.

The entire work must be executed and completed in the most substantial and workmanlike manner, and to the full intent and meaning of this specification and the drawings herein referred to, whether expressed or implied, and to the entire satisfaction of the architect or his legal representative, who shall have full power to refuse any materials different from those described to be used, and to cause any unsound work to be taken down, altered, and renewed at the contractor's expense.

No allowance will be made for any extra work whatever, unless the cost of the same, previous to execution, is agreed upon in writing between the parties to this contract or their legal representatives.

It must be distinctly understood that this specification and the following plans and drawings shall form part of the contract, and be held equally binding upon the parties thereto.

Any errors or discrepancies in any part of the specification or upon any of the plans, elevations, sections, and drawings submitted to the contractor, and upon which proposals are invited, and which are intended to form part of this contract, shall be construed in favor of the United States.

The following is a memorandum of the plans and drawings referred to, viz:

A. Plan of the basement.
B. " first story.
C. " second story and third story.
D. Elevations of flanks.
7 E. Longitudinal section through the center.
F. Elevations of west fronts.
G. Transverse section through the center.
H. Longitudinal section through the building.

These plans, drawings, and specifications will be supplemented from time to time, as may be necessary to a perfect execution of the work, by full-sized detail drawings, which shall be received and considered as equal authority with the memorandum of plans above recited.

Previous to the award of the contract, the architect will furnish to any or all bidders written explanations to written inquiries respecting any part of the work or materials not perfectly understood by them, reserving to himself at all times, until the completion of the work and delivery of the building, the sole right to interpret his own plans and specifications, which interpretation shall be final and binding upon both parties to this contract.

The following is a general description of the building:

The building shall be perfectly fire-proof, and constructed principally of stone, bricks, and iron, and covered with slate laid on iron rafters. A flag-stone base shall extend around the whole building. The door-sills and window-sills must be of granite. The walls to be of bricks, and all the openings for doors and windows to have arches turned over them.

The floors must be of brick arches supported upon rolled-iron beams resting upon cast-iron columns in the center of the spans. The windows shall have wrought-iron shutters. There must be wrought-iron doors to all the openings, with proper fastenings thereto.

The belt courses must be as shown on the elevations, and all to be of granite. The quoins to be of brick.

All the floors, including the basement, to be of hard paving bricks.

The cartways into the building must be paved with granite blocks, in the style termed Belgian pavement.

A brick pavement, with a stone curb, shall extend around the whole of the exterior of the building.

On each flank is an arcade of three arches, and of sufficient space to receive and discharge goods on stone platforms, placed on a level with the first floor.

The entrance to the basement is through an archway in the west front, where the roadway around the exterior of the building is on a level with the basement floor.

All the stairs shall be of cast-iron supported on wrought-iron horses or bearers, with hand-rails of wrought-iron gas-pipe two and a half ($2\frac{1}{2}$) inches in diameter.

The water from the roofs shall be carried off through strong cast-iron pipes, built in the walls, discharging into terra cotta drain-pipes; these drain-pipes must connect with the sewers or gutters at present on the premises.

Cast-iron water-pipes connecting with the mains now on the premises shall be carried up to the upper floors.

Gas shall be introduced into the building according to city regulations, and burners placed as directed, so as to perfectly light each portion of the building hereinafter specified to be lighted.

The building shall form three sides of a square or block, the fourth side being already built. The dimensions will be as shown on the drawings, as follows:

The length of each flank is two hundred (200) feet, the width
8 from out to out over the walls is one hundred and fifty (150) feet,
being the same width as the old building adjoining on the east; the height to be governed by the old buildings, as shown on the elevations.

The heights of the stories, from top of floor to top of floor, are as follows:

The basement ten feet	(10 feet.)
" first story, eleven feet four inches	(11 ft. 4 in.)
" second " " " " "	(11 ft. 4 in.)
" third " nineteen " " "	(19 ft. 4 in.)

Each floor being on a level with the corresponding floor of the old building.

The basement plans exhibit as follows:

Two rooms, each	61 ft. 8 in.	by	31 ft. 4 in.
" " "	51 ft. 8 in.	by	31 ft. 4 in.
" " "	36 ft. 4 in.	by	31 ft. 4 in.
" " "	36 ft.	by	29 ft.
" staircases	8 ft. 8 in.	by	31 ft. 4 in.
One staircase	21 ft.	by	17 ft. 5 in.
" cartway	10 ft. 8 in. wide.		
And one area or center space between the buildings, measuring	164 ft. 3 in.	by	69 ft. 4 in.

The first story contains:

Two rooms, each	62 ft.	by	31 ft. 4 in.
" " "	52 ft.	by	31 ft. 4 in.
" " "	36 ft. 8 in.	by	31 ft. 4 in.
One room	70 ft.	by	36 ft. 4 in.
Two arcades	39 ft.	by	36 ft.
" staircases	9 ft.	by	31 ft. 4 in.
One staircase	21 ft.	by	17 ft.
And one area between the buildings	164 ft. 3 in.	long by	70 ft. wide.

The second and third stories will be divided alike, and contain rooms of the following dimensions:

Two rooms, each	62 ft.	by	31 ft. 8 in.
" " "	52 ft.	by	31 ft. 8 in.
" " "	37 ft. 2 in.	by	31 ft. 8 in.
One room "	70 ft.	by	36 ft. 8 in.
Two rooms "	39 ft.	by	25 ft.
" stairways and landings	39 ft.	by	25 ft.
One stairway	21 ft.	by	17 ft.

EXCAVATIONS.

The basement under the entire building must be excavated to a clear depth of ten feet six inches (10 ft. 6 in.) below the top of the first floor.

The trenches for the foundation walls shall be excavated not less than eighteen (18) inches beneath the basement level into the natural gravel, to insure a perfectly solid and firm foundation. The piers for the arcades must extend to the same depth as the bearing walls of the building. All of these shall be of the dimensions specified in the mason-work.

Trenches shall be dug for the drain-pipes and sewer, as shown on the plans, and of sufficient depth to be secure from frost.

The earth must be filled in and rammed hard and solid against all
9 walls and foundations, &c., that may require it, so as to make a perfectly solid finish and prevent damage from rain or frost. All the surplus earth excavated from the basement foundations, &c., and all rubbish accruing from the construction of the building must be removed from the premises.

FOUNDATIONS AND STONE-MASON'S WORK.

All the basement walls, from the top of the footings to the top of stone base, and all the piers and walls throughout the building marked for stone, shall be constructed by the contractor of the very best building stone. They must be of large size, and laid in strong cement mortar, made of the best lime and cement and clean, sharp gravel.

The footings for all the walls and piers must be one (1) foot larger than the walls that are placed upon them, and extend to a depth of not less than one (1) foot six (6) inches below the basement floor. But in case this is not found of sufficient depth to insure a solid and firm foundation they shall extend one (1) foot into solid gravel, as specified in "excavations."

The piers for the columns shall extend not less than three (3) feet below the basement floor, and as much deeper as may be necessary to place the footings one (1) foot into solid gravel.

All the footings throughout the building must be of concrete, made of cement and brick, or stone, broken to the size of a hen's egg.

The exterior walls of the basement, where they extend above the basement floor, shall be two (2) feet (2) inches in thickness; and below the floor three (3) feet in thickness. The interior partition walls must be two (2) feet six (6) inches thick from the footings to the basement floor.

The cellar walls of the old building, that may be exposed by the excavation for the new building, shall be dashed up and made to show as good a face as the new walls, and securely underpinned, if it may be required.

The walls for the cellar doors shall be one (1) foot six (6) inches thick. The piers for the arcade, three (3) feet six (6) inches in thickness, and to extend to the depth of the basement walls.

DRESSED-STONE WORK.

There shall be a base of North River flag-stone, to extend around the whole of the exterior of the building, and stepped to suit the grade of the ground, as shown in the elevation. It shall be not less than five (5) inches in thickness, cut with a wash on the top.

The belt courses around the arcades must be of granite, twelve and a half (12½) inches wide by eight (8) inches thick, and cut with a top-wash of about three and a half (3½) inches, and cove at the bottom, if required.

The keystones for the arches of the arcades and the arches of the west front shall be of granite.

The cellar-door jambs, lintels, and sills must be of granite, and all the window sills throughout the building must be of flag-stone, five (5) inches thick; the basement window-heads to be seven and a half (7½) inches wide. All the door sills to be eight (8) inches thick, and in width to suit the thickness of the walls in which they are placed.

The steps to the entrance doors shall be eight (8) inches rise and ten inches tread.

10 Fourteen (14) granite blocks will be required—for fenders—built in the piers of arcades and basement cartway, each measuring four (4) feet six (6) inches by two (2) feet six (6) inches by one (1) foot six (6) inches, dressed on three sides, and top and bottom beds.

Under each of the cast-iron columns shall be placed a granite block, with the top and bottom dressed and firmly bedded on the stone piers in the most solid manner, each block to measure not less than two (2) feet six (6) inches square and ten (10) inches thick.

Under the end of each iron beam and girder, where it rests on the walls, shall be placed a North River flag-stone eight (8) inches wide by twelve (12) inches long and from two (2) inches to three and a half (3½) inches thick.

There shall be four (4) North River flag-stone platforms, upon which to receive and discharge goods under the arcades, each to measure fourteen (14) feet six (6) inches by twenty (20) feet, and composed of six (6) slabs four (4) inches thick, the edges dressed and the joints neatly fitted together, the whole well bedded in mortar on the brick arches, and made perfectly solid and water-tight.

Around all the hatchways, except those in the platforms, shall be placed North River flag-coping, twelve (12) inches wide and not less than six (6) inches thick, the edges to be dressed and ends notched into the side-pieces, the bed notched down and fitted tight to the iron beams. Four (4) wrought-iron eyes for the hatchway doors shall be leaded fast into the coping of each hatchway.

All the windows shall have inside sills of North River flag-stone, one and three-quarters (1¾) or two (2) inches thick, well bedded in mortar, the edges jointed and set flush with the wall on both sides.

There shall be a rough curbstone (similar to that around the old building) to extend around the exterior of the building and in the area, and a flag-stone gutter eight (8) inches wide outside of the curbstone.

STONE PAVEMENT.

The arcades and cartways into the building shall be paved with Belgian pavement, of small granite blocks, well bedded in gravel.

BRICK WORK.

All the walls throughout, above the stone walls in the basement, shall be built of the best quality of bricks, of the kind hereinafter described.

The exterior and inner facings to be laid in white bar-sand mortar; the filling-in to be laid in good, strong cement mortar, made with the best lime and cement, in equal proportions when dry, and strong, well-screened gravel.

The outside of the exterior walls shall be built of the best back-front stretchers, of a uniform dark color, and laid in the best manner. The inside facings of these walls, and the facings of all the partition and division walls, shall be of good, straight, hard bricks, laid in cement mortar, and have the joints neatly struck. The filling-in can be of good, hard-burned salmon bricks.

Arches shall be turned over all the doors and windows and all openings.

The eave cornice, quoins, and rustics are to be of bricks, as shown on the drawings.

In the basement all the exterior walls and principal partition walls must be one (1) foot ten (10) inches thick; the walls under the arcade platforms two (2) feet thick, and the balance of the basement walls eighteen (18) inches and thirteen (13) inches, respectively, as marked on the plan.

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All the exterior walls of the first story shall be one (1) foot ten (10) inches thick, from the top of the first-story beams to the top of the second-story beams.

The second and third story exterior walls shall be one (1) foot six (6) inches thick.

The principal division walls, from the first floor to the roof, to be one (1) foot six (6) inches thick. The staircase walls one (1) foot (1) inch thick, and the walls over the arcade nine (9) inches thick—all to run up to the roof.

The arcade piers and arches must be two (2) feet six (6) inches thick, as shown and figured on the drawing. Wrought-iron eyes must be built in the wall for the doors and window shutters, as shall be directed.

If necessary, flues must be built in the walls, as may be directed hereafter, all to be well pargetted and topped out the usual height above the roof.

All openings in the present building adjoining the new building must be walled up if required.

All the floors, excepting the basement floor, must be composed of brick arches, laid in good, strong cement mortar, and supported upon nine (9) inch rolled iron beams, placed not more than from three (3) feet to three (3) feet six (6) inches from center to center (as shown on first-story plan). The floor arches must be composed of the best hard bricks, the branches of the arches filled up level with the crown, with salmon bricks or concrete, made of brick spalls or coarse gravel and mortar, leveled off and covered with a good coating of cement, upon which the brick floors will be bedded.

The basement must have a coat of concrete or gravel-mortar, four (4) inches thick, to receive the brick floor.

All the bricks used for the floors must be of the best quality hard paving bricks, laid in cement, and grouted with cement, so as to fill the joints perfectly full and flush.

A footwalk, six (6) feet wide, must be laid around the building, as

shown on the plan, and one of four (4) feet wide in the area, composed of the best quality paving bricks, laid in a good bed of gravel, not less than six (6) inches deep.

The cast-iron conductors from the roof must be built in the walls.

ROLLED-IRON BEAMS.

All the floors above the basement must be sustained by rolled-iron beams, supported by brick walls, and rolled-iron beam girders and cast-iron columns. The ends of these beams, where they come together, must be secured to each other by wrought-iron plates, firmly riveted and bolted fast to the web of each beam.

The beams for the first and second floors, in the rooms measuring as much as thirty-one (31) feet between the walls, shall be of heavy (eighty-nine (89) pounds per yard) nine (9) inch rolled-iron beams. Those for the third floor may be the light (seventy (70) pounds per yard) nine (9) inch rolled-iron beams, all spaced as per plan, from three (3) feet to three (3) feet six (6) inches from center to center.

The beams for the platform landings under the arcades must be the light (seventy (70) pounds per yard) rolled-iron beams. Those for the
12 staircase measuring nine (9) feet and seventeen (17) feet between the walls; and over the cartway to the basement may be the light (seventy (70) pounds per yard) nine (9) inch beams.

The girders of each story supporting the beams in the center of the buildings and resting on the columns must be made of two (one hundred and fifty (150) pounds per yard) nine (9) inch rolled-iron beams, firmly bolted together by five-eighths ($\frac{5}{8}$) wrought-iron bolts with cast-iron stretchers or separators. The ends of these girders, where they meet over the columns, must be secured together by wrought-iron plates in the most substantial manner.

There will be five (5) girders required—one (1) over the cartway, in the western building, supporting the staircase wall, made of three beams; two (2) supporting staircase walls in the flank buildings, and two (2) supporting the nine (9) inch partition walls in the second and third stories, each girder to be made of two (2) ninety (90) pounds per yard nine (9) inch rolled-iron beams, bolted together, as above described.

All the framing must be secured with wrought-iron plates and riveted in the strongest manner. The ends of the beams must run nine (9) inches into the walls and rest on a North River flag-stone, as described in dressed-stone work.

ROOF.

The rafters for the roof of the building must be of rolled T-iron (twenty-seven (27) pounds per yard), secured together at the top with plates and rivets, and bolted fast at the foot to shoes firmly secured to the walls. Two (2) struts will be required for each rafter, made of the same sized iron as the rafters, and bolted firmly to them. The tie-rods must be not less than one and a half ($1\frac{1}{2}$) inch round iron.

These rafters must be spaced not more than eight (8) feet from center to center.

The lath upon which the slate is to be laid must be of rolled iron two

and a half (2½) inches deep by three-quarters (¾) of an inch on the upper flange, and must be spaced not more than seven and a half (7½) inches from center to center, and notched on to the rafters, the slating to be secured to them with copper wire.

CAST-IRON.

The cast-iron columns in the basement must be fourteen (14) inches in diameter at the base, with a uniform thickness of metal not less than one and a half (1½) inches.

The first-story columns must be twelve (12) inches in diameter at the base, and one and a half (1½) inches uniform thickness of metal.

The second-story columns must be ten (10) inches in diameter at the base, and one and a half (1½) inches uniform thickness of metal.

Heavy cast-iron chairs will be required between the columns from one story to the other. These chairs must be (16) inches square on the top and have three ribs twelve (12) inches deep and one and a half (1½) inches thick. The caps of all of these columns must have lips to receive the chairs, and the chairs must have crosses to receive the columns resting on them; the bearings of all to be turned or planed perfectly true and square.

A cast-iron plate one foot ten inches (1 ft. 10 in.) long by one foot wide by one inch thick will be required, securely bolted down to the
13 walls under each end of the rafters, and must be provided with bolts to receive the shoes of the rafters.

STAIRS.

There shall be three stairways running from the basement floor to the third story, made with cast-iron steps and risers supported on strong wrought-iron horses. The steps to be four (4) feet long, with a rise of seven and a half (7½) inches and ten (10) inches tread on the horse. The hand-rail to be of galvanized iron gas-pipe, two and a half (2½) inches in diameter.

The piers and arches and masonry floors, and the roof over the court-yard, shown in dotted lines, and in a different color, on the original drawings, are not to be constructed; and the parts marked upon the plans to be omitted are also to be omitted, though shown upon the drawings.

The whole must be fitted up and completed in the most substantial manner.

WROUGHT-IRON WORK.

WINDOWS.—All the windows must have wrought-iron shutters of No. 14 iron; with stiles one and a one-half (1½) by three-eighths (⅜) inches, hung with strong wrought hinges on eyes built into the walls.

They must be secured with long wrought-iron hooks.

DOORS.—All the doors must be of wrought-iron No. 12 (wire gauge), riveted to wrought-iron frames one and three-quarters (1¾) inches wide by one-half (½) thick, and hung on strong wrought-iron hinges to eyes built in the walls. The fastenings must be of wrought bolts, top and bottom, with swinging bars, hasp, and first quality brass padlock, with chain attached.

There will be six single doors, which must each have first quality American knob locks, with duplicate keys.

All the hatchways must have iron doors of No. 12 iron, riveted to wrought frames, one and three-quarters ($1\frac{3}{4}$) by one-half ($\frac{1}{2}$) inches.

They must be hung on strong wrought hinges, leaded into the stone coping, and secured with strong hooks.

All of this work must be executed in the most substantial manner and of the best wrought-iron. The fastenings to be of the most approved kinds.

Wrought-iron anchors will be required bolted to the end of every third beam, to tie in the walls.

These anchors must be one and three-quarters ($1\frac{3}{4}$) by one-half ($\frac{1}{2}$) inch iron, with heads eighteen (18) inches across.

Two rows of wrought-iron tension straps will be required for each bay of beams. These straps must be of one and one-half ($1\frac{1}{2}$) by ($\frac{3}{8}$) three-eighths iron, and must be securely bent around the bottom flange of each beam.

SLATING.

The whole of the roofs must be covered with best quality "Peach Bottom" slate, or other equal in quality, laid on the iron purlins, and fastened by copper wire in the most secure manner and pointed on the under side, so as to be perfectly water-tight.

The gutters, ridges, hips, and valleys to be covered with best charcoal tin.

14 TIN WORK.

All the gutters, ridges, hips, valleys, eave pipes, &c., must be of the best quality cross charcoal roofing tin, laid in the best manner, well soldered, and made perfectly water-tight.

All tin work must be painted on each side with two coats of red lead and linseed oil.

A galvanized iron box will be required on the top of the brick cornice (as shown on the drawing D E) to receive the tin gutter.

PAINTING.

All the exposed iron work must have three coats of paint made of the best white lead and linseed oil, boiled, and must be finished in such tints as may be directed by the architect.

PLUMBING AND DRAINAGE.

The water from the roofs must be carried off through strong four (4) inch cast-iron pipes, built in the walls, and conducted to the main drains through six-inch terra cotta pipes.

The main drain-pipes must be fifteen-inch terra cotta pipes, running the entire length of the building, and must connect with the sewers or covered gutters at present on the premises. These pipes must be of a sufficient depth below the surface of the ground to prevent freezing.

All the joints must be made water-tight; the joints of the iron pipes to be leaded.

Water must be introduced into the building in three places, from the mains at present on the premises, through four-inch cast-iron pipes; one main to be placed in each staircase. Fittings for fire-hose attachments must be placed in each story.

GAS-PIPES.

Gas shall be introduced into the building from the mains on the premises, and burners must be placed on the staircases, landings, arcades, and passages, as may be directed.

The number of burners to be as follows:

Arcades	four	(4)	plain	brackets.
First story	five	(5)	"	"
Second story	"	(5)	"	"
Third story	"	(5)	"	"
Basement	"	(5)	"	"

HOISTS.

Three regular store-hoists will be required, fitted up in the most approved manner, to be worked by hand or portable steam engine.

In conclusion, the architect considers it due to himself as well as to the Department to impress upon all bidders the fact that the buildings above specified are intended to be completely and substantially built; and it being impossible to specify every particular item of materials and workmanship required, it must be distinctly understood that whatever is necessary to execute the plans and specifications in their spirit must be included in the proposal. Therefore no allowance will be made for any ignorance on the part of the contractor as the work progresses, as the architect will faithfully supply, when asked, all information, written and verbal, necessary to a clear and perfect understanding of his design previous to the proposals being made.

JOHN McARTHUR, JR.,
Architect, 209 *South Sixth street, Philadelphia.*

II.—*Amended petition.—Allowed and filed Feb'y* 15, 1869.

The said petitioners, by this their amended petition, respectfully show that, in pursuance of the said contract set forth in the original petition heretofore filed in this cause, they commenced the erection of the building mentioned in said contract on the 15th day of April, 1867.

That in consequence of the unreasonable hindrances and delays mentioned in said original petition the petitioners suffered damages in a large sum of money, to wit, the sum of forty-six thousand four hundred and ninety-three dollars and seventy-three cents ($46,493.73).

That the said extra materials furnished and the said extra labor performed on said building were worth the sum of forty-seven thousand and thirty-eight dollars and eighty-six cents ($47,038.86), according to the following specific statement, which the petitioners substitute for the particular statement set forth in said original petition, that is to say:

1. For cutting out and removing 315 cubic feet of concrete footings, by order of defendants, and replacing the same with grouted work of pure cement, not required by contract, at $1 per foot $315 00

2. For difference between common concrete, as required by contract, and grouting of pure cement, as required by defendants, on 349 perches of footing, at $7.50 per perch..... 2,617 50

3. For changing 75 stones placed in walls for iron beams to rest upon, required by specifications to be 8 by 12 inches, taken out and replaced by stone 8 by 24 inches, and the same taken out and again changed to 8 by 12 inches; as also for taking down the brick walls, securing and rebuilding the same, all by order of the defendants..... 500 00

4. For plastering of basement walls, one coat, 1,722 yards, at 20 cents 344 40

5. For extending projection four inches, and filling in between rafters around the entire building of brick-work, being 37,080 bricks, at $50 per thousand 1,850 00

6. For 5,000 superficial yards of grouting 2½ inches thick spread over floors, in addition to that required for haunches, being of pure cement, at $1.25 per yard..... 6,250 00

7. For the difference in leveling up the haunches of the arches for the floors to rest upon, in grouting made of pure cement, rather than in concrete made of lime and sand, as required by contract, amounting to 311 perches, at $10..... 3,110 00

8. For difference between laying floor arches in lime cement and sand, as required by contract, and laying the same in pure cement mortar, as required by defendants, upon 369,380 bricks, at $6 per thousand..... 2,216 28

9. For difference between common concrete made of lime and sand, as required by contract, for cellar floors, and grouting of pure cement, as required by defendants, 212 perches, at $9 per perch 1,908 00

10. For difference in iron roof, between that as required by contract and as actually built by order of defendants, including a change in the iron tie-rods from single 1½ round inch rod to complicated double rods, increasing the number of trusses, drilling purlins, and supporting the same by iron rods encased in gas pipe, making four complete sets of tie-rods running around the entire building, in making extra hips and valleys, occasioning large increase in materials and labor, with other modifications and changes..... 13,938 48

11. For scuttle to roof, there being none required by plans or specifications..... 75 00

12. For carrying up partition walls to ridge of roof, by order of defendants and not required by contract, requiring 37,092 bricks at $30 per thousand, and fitting and cutting the same to roof, being 324 lineal feet of wall, at 50 cents per foot..... 1,274 76

13. For topping eight (8) chimneys with North River flagstones, by order of defendants, and not required by contract 92 00

14. For transom windows of plate glass with iron sash, by order of the defendants, not required by contract..... 100 00
15. For taking down 31,500 bricks and cut stone belt course on west front of building, by order of defendants, and relaying and resetting the same after it had been examined, approved, and accepted by John McArthur, jr., supervising architect in conformity with the contract..... 945 00
16. For 50 sets of bolts placed in the walls, for roof trusses over court-yard, viz, two bolts and iron plate to each set for clamping brick work, furnished by order of defendants, not required by contract..... 150 00
17. For taking down four 9-inch beams and replacing the same by four 12-inch beams, by order of the defendants, not required by contract, it being the placing of 12,300 pounds of iron beams, at $\frac{3}{4}$ cent per pound..... 92 25
18. For building additional walls between old and new building, and placing iron beams for said walls to rest upon, by order of the defendants and not required by contract, requiring 14,400 bricks at $30 per thousand, $432, and placing of 1,820 pounds of iron beams at $\frac{3}{4}$c. per pound, $13.65..... 445 65
19. For difference between the tin gutters, ridges, hips, valleys, eave-pipes, &c., required by contract, and the copper gutters, ridges, hips, valleys, eave-pipes, &c., substituted therefor by order of the defendants..... 3,608 25
20. For 2,610 pounds of additional iron beams used in west stairway, not required by contract, furnished by order of defendants, at 10c. per pound..... 261 00
21. For cutting 27 holes through stone coping and putting in iron eyes for hoisting apparatus, by order of the defendants and not required by contract, at $6 each 162 00
22. For cutting out brick-work to admit new girders, occasioned by neglect of the defendants to furnish girders within the time agreed upon..... 175 00
17 23. For placing 700 iron plates under the iron beams, after all the beams were in place, by order of defendants, and not required by contract, at 50 cents each..... 350 00
24. For change of hatchways in north and south flanks of building, requiring additional beams and altering of frame work and making good the brick-work surrounding, caused by error in detailed plans furnished by defendants..... 150 00
25. For closing four window openings in basement of old building, by order of defendants, not required by contract... 100 00
26. For four sets of oak plank steps to basement, furnished by order of defendants, and not required by contract..... 200 00
27. For difference between bedding the brick pavement of the several floors in pure cement $1\frac{1}{4}$ inches thick, as required by defendants, and bedding and grouting the same in common

mortar, as required by supplemental specifications, being 6,667 yards, at 87 cents per yard	5,800 29
Total amount extras	47,038 86
Amount of damages	46,493 73
Total	93,532 59
Deduct the amount allowed and paid by defendant for extra work and extra material	2,286 30
Balance due petitioners	91,246 29

That there is now due to the petitioners for the said extra work and extra materials, as aforesaid, the said sum of $44,752.56, and for the said damages, as aforesaid, the sum of $46,493.73, amounting in the aggregate to the full sum of $91,246.29, for which sum they claim judgment.

That the said Albert Grant has, since filing the original petition, assigned so much of said claim as may be necessary to secure the payment of the sum of five thousand dollars to George Mattingly.

ALBERT GRANT,
Washington, D. C.
ENOCH TOTTEN,
Washington, D. C.
O. H. WALDO, *Wisconsin,*
Solicitors for Claimants.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Albert Grant, being first duly sworn, doth depose and on his oath say that he is one of the claimants named in the foregoing amended petition and in the original petition in said cause; that he is the sole owner of this claim, therein specified, except as therein noted; that no assignment or transfer of said claim, or any part thereof, or any interest therein has been made, except as therein stated; that he is justly entitled to the amount claimed in said amended petition from the United States after allowing all just credits and offsets, and that he believes the facts stated in said petition are true.

A. GRANT.

18 Subscribed and sworn to before me this 10th day of February, A. D. 1869.

JOHN F. CALLAN,
Commissioner of the Court of Claims.

EXHIBIT B.

The following is a list of the reductions of Mr. McArthur, and they, in addition to those specified in the plans attached hereto, comprise the modification of the original photographed plan. The bids received on January 23, 1867, and since that day, contemplate the erection of a building as shown on the photographed plan, except as to the reductions specified thereon, besides those contained in this paper.

EXCAVATIONS.

No. 1. Leave out the excavations of the area between the buildings (excavate for the buildings only).

FOUNDATIONS AND STONE-MASON'S WORK.

No. 2. Leave out the cement in the mortar (except for the concrete foundations).

No. 3. Make the exterior basement walls (on those fronts where there are no quoins or rustices) 22 inches thick; and on the walls where there are quoins and rustices, two (2) feet two (2) inches thick, and build them of stone to the top of the ground. Make the interior partition walls twenty-two (22) inches thick, and build them of stone to the first floor, instead of brick; build the staircase walls eighteen (18) inches thick, and build them of stone instead of brick. Build the walls under the platforms in arcades, eighteen (18) inches thick (instead of two (2) feet and two (2) feet six (6) inches), and build them of stone instead of brick, and when exposed above the ground the face hammer dressed and pointed.

DRESSED-STONE WORK.

No. 4. Leave out the keystones in the arches of the arcades.

No. 5. Reduce the coping around the hatchways to ten (10) inches, instead of twelve (12) inches.

No. 6. Leave off curb-stone and flag-stone gutters around the buildings.

STONE PAVEMENT.

No. 7. Change the pavement under the arcades from Belgian pavement to the ordinary cobble-stone pavement, the same as now in the arcades of the old buildings.

BRICK WORK.

No. 8. Leave out the cement in the mortar for the walls, but retain it for the arches of the floors.

19 No. 9. In the basement, substitute stone for the inside walls (and part of the outside walls) as specified in foundations and stone-mason's work, article No. 3.

No. 10. Make the exterior walls of the first story 1′ 6″ instead of 1′ 10″. The second story walls to remain as they are, one foot six inches (1′ 6″).

No. 11. The third-story exterior walls reduce to 13 inches, with piers between the window four inches thicker and eighteen (18) inches wide.

No. 12. The principal division walls from the first floor to the top of the third floor make 18 inches thick as they are specified, but reduce them to 13 inches thick from the third floor to the roof.

No. 13. The staircase walls in the third story may be nine (9) inches instead of 13 inches.

No. 14. Leave off the brick foot-walks around the building and in the area. (The cast-iron conductors not built in the walls.) See tin work and plumbing.

ROLLED-IRON BEAMS.

No. 15. Space the beams for the floors four feet and four (4) feet six (6) inches to come out even in the rooms, instead of three (3) feet and three (3) feet six (6) inches.

No. 16. Use two (2) twelve (12) inch, one hundred and twenty-five (125) pounds per yard, beams for the girders, in the place of two (2) nine (9) inch, one hundred and fifty (150) pounds beams.

STAIRS.

No. 17. Make two (2) stairways instead of three (3), but frame the floors so that the third stairs can be put up hereafter.

DOORS.

No. 18. Leave out thirteen (13) doors, including the two (2) ten (10) feet wide doors, and substitute windows in the places.

TIN WORK.

No. 19. Substitute four (4) inch tin rain-water conductors (with cast-iron pipes below the ground to the drain pipes) placed on the outside of the walls, instead of cast-iron pipes built in the walls.

PLUMBING.

No. 20. Hoists: Leave out the store hoists.

(Signed) A. GRANT.
DARIUS C. JACKSON.
G. H. CROSMAN,
Ass't Q. M. Gen'l, U. S. A.

Witnesses:
EDWIN NORTH.
JOHN RODERMEL.
A. W. CLARK.

ASS'T QUARTERMASTER-GENERAL'S OFFICE,
Philadelphia, April 13, 1867.

20 III.—*Opinion of the court.*

MILLIGAN, J., delivered the opinion of the court:

On the facts of this case, which are briefly stated in the opinion, the claimants seek, first, $47,038.86, less $2,286.30 which have been paid them, for extra work and materials furnished in the building; and, second, $46,493.73 for damages produced by the delays and interruptions in the fulfillment of their contract with the defendants.

1st. In respect to the facts which are applicable to the first demand, the United States Assistant Attorney-General, after a most careful examination of the whole testimony, in his printed brief very justly remarks that "it is not his purpose to discuss the evidence which it is alleged establishes

the several items of the claimants' demand. The evidence adduced for that purpose may be regarded as sufficient to establish the claimants' right to recover, if the Government is liable to pay, the several amounts the claimants allege they are entitled to recover."

Assuming that the admission of the Assistant Attorney-General is justified by the facts proven in the record, which we do not doubt, the question, so far as the first branch of this inquiry is concerned, turns wholly upon the law of the case. The contract obliged the claimants to supply the materials and complete the building according to certain plans and specifications thereunto annexed; and General Crosman, by whom the contract was signed, and the supervising architect, by the contract itself were constituted the agents of the United States to superintend the erection of the building, with full and equal power to reject any materials or workmanship which, in their opinion, or the opinion of either of them, were not of the best quality. Neither of them had in this respect
21 superior power to the other, as was erroneously supposed by General Ekin in his final decision of this case in the Quartermaster's Department. The contract limited the powers of each, and neither could go beyond its fair and reasonable interpretation.

The materials were to be of the best quality, and all the work performed necessary to render the building perfect and complete in every respect according to the plans and specifications annexed, whether expressed in the same or not, and no extra charge for modifications allowed unless such modifications were agreed on in writing, and no change or modification mutually agreed on by the parties was to affect the validity of the original contract.

It is obvious from this language that the parties provided in their agreement for changes and modifications in the work; but it is equally clear that these changes could not be made, according to the contract, unless they were first mutually agreed on by the contracting parties and that agreement reduced to writing. Every modification, by the terms of the agreement, contemplated a new contract, which in no way was to affect the validity of the old one.

Thus the case stood under the original agreement. But it is argued that that part of the agreement which relates to changes or modifications in the original contract was waived or modified by parol, and that the general principles of the public law authorize the plaintiffs to recover for the extra labor and material bestowed on the building.

The strictness which in former times prevailed in relation to a claim for extra labor has in more modern times been somewhat relaxed; and the rule in this respect, as laid down by Professor Parsons, is as follows:

"The party cannot recover for extra work, or even for better materials used, if he had not the authority of the other party therefor. But the authority will be implied if the employing party saw or knew of the work or materials in time to object and stop the work without injury to himself, and not under circumstances to justify his belief that no change was intended, and did not object, but received and held the benefit of the same; and if he received from the employed an estimate of the cost of such extra work, and then ordered it, the party employed might be bound by such estimate. And if the changes were such that the employer need not infer that they involved any additional expense, and he was not so informed,

an express assent to them does not imply a promise to pay for them, because it is fair to suppose that he believed they were done under the contract, and assented to only on those terms. If the changes necessarily imply an increased price, and he expressly authorizes, or silently, but with full knowledge, assents to them, he is bound to pay for them." (Parsons on Contracts, 541. See also Munford v. Brown, 6 Cowen, 476; Dubois v. Delaware and Hudson Canal Company, 4 Wend., 291.)

The facts of this case bring it within the principles of law just laid down, and they would necessarily carry the judgment of this court in favor of the claimants were there no other intervening obstacles; for it cannot be denied, on the proof in this record, that the changes made in the original plans and specifications necessarily involved in many instances an increase both of labor and cost of materials, which was known to General Crosman, the Government agent. He stood by and daily witnessed their completion without objection, and, if not in terms assenting to them, impliedly authorizing their completion. And when the work was substantially stopped on the whole building by his authority, the contractors refused to proceed, except on the authority of General Rucker's let-
22 ter, which, by them and the architect, not to say General Crosman, was regarded as a waiver of the requirement in the contract that "no extra charge for modifications will be allowed unless such modifications are agreed upon in writing," and that the cost of all such changes and modifications should, when the building was completed, be settled by a board of arbitrators.

These facts, with many others in which the record abounds, leave no doubt that the alterations made after the 28th of September, 1867, were made under the supposed authority of the Rucker letter and the new and additional parol agreement of the parties entered into at the time and distinctly proven by Mr. Fraser, the architect, Allen A. and Jackson Grant, and others.

Assuming, therefore, that the claim for extra work and material, which is the foundation of this action, rests on a parol agreement, the first question which presents itself is whether the Secretary of War, in person or through those acting under him, had lawful authority to make such a contract. If the authority exists, we are bound to enforce the contract; but if it be wanting, it is equally clear we cannot enforce it as a contract against the defendant who never authorized it. The Government, abstractly considered, is a legal entity, and can neither speak nor act except through its official seal and its lawful officers and agents, who in every instance act under the authority and restraints of law; and when any such officer or agent, whether he stand at the head of an Executive Department or act as the agent of such head, assumes to contract with a third person, such person must look to the statute under which his contract is made and see for himself that his contract comes within the terms of the law; otherwise he takes the consequences of his own folly. (The Floyd Acceptance Cases, 7 Wallace's R., 666–680; Curtis Case, 2 C. Cl's R., 144–152; Henderson's Case, 4 C. Cl's R., 75.)

The act of Congress approved March 2, 1861 (12 Stat. L., 220), and the act of June 2, 1862 (12 Stat. L., 441), are applicable to the class of cases of which the one under consideration falls. The first section of the act of June 2, 1862, declares "that it shall be the duty of the Secretary of War,

of the Secretary of the Navy, and of the Secretary of the Interior, immediately after the passage of this act, to cause and require every contract made by them severally, or by their officers under them appointed to make such contract, to be reduced to writing, and signed by the contracting parties, with their names at the end thereof, a copy of which shall be filed by the officer making and signing said contract in the 'return office' of the Department of the Interior as soon after the contract is made as possible, and within thirty days, together with all bids, offers," &c.

The tenth section of the act of March 2, 1861, which is a substantial copy of the sixth section of the act of March 1, 1820, after prescribing the different modes in which all contracts shall be made, declares that "no contract or purchase shall hereafter be made unless the same is authorized by law, or under an appropriation adequate to its fulfillment, except in the War and Navy Departments, for clothing, subsistence, forage, fuel, quarters, or transportation, which, however, shall not exceed the necessities of the current year."

It is obvious, from the act of June 2, 1862, and the establishment under that statute of the "return office," that Congress intended to limit the power of the Secretaries of War, Navy, and Interior, as well as all officers or agents acting under their authority, in matters of contract, to written agreements signed by the contracting parties. It is true the act does not in terms declare parol contracts invalid; but when this
23 statute is construed in connection with the act of March 2, 1861, which provides for the exigencies under which parol contracts and purchases may be made, there can be no doubt that such contracts are prohibited, and we are, therefore, denied the right of enforcing them as contracts in this court. And it can make no difference in this respect whether the original contract rests in parol or the subsequent or collateral agreement is verbal, if the contract sued on falls within the prohibitions of the acts of Congress referred to, this court has no power, without further legislation on the subject, to enforce it.

But in this case the record demonstrates beyond all question that extra work was performed and extra materials provided, which largely increased the labor of construction and the value of the building beyond the original contract price, and which the United States have accepted and appropriated without just compensation.

Under this state of facts, and dealing with this case as a transaction between individuals, there can be no doubt that the claimants could never recover the quantum meruit. But to this ground the 10th section of the act of March 2, 1861, already quoted, is interposed, which prohibits all contracts or purchases unless the same be authorized by law or under an appropriation adequate to its fulfillment. The second section of the act of July 13, 1866 (14 Stat. L., 90), under which the contract in question was made, is in the following words: "That the sum of $146,000 be, and the same is hereby, appropriated to be disbursed by the Secretary of War in the erection of a fire-proof building in the State of Pennsylvania, to be used as a store-house for Government property at that post."

It is clear that this act, without the appropriation, contains no words authorizing a contract for the building; but the amount appropriated was considered adequate to the completion of the building desired, and therefore the authority of the Secretary charged with its disbursement to con-

tract for the work designated in the law. The contract was strictly lawful to the extent of the appropriation, but no further. But the cost of the building, under the authority of the Government agents intrusted with its erection, was carried beyond the appropriation, and under their orders completed, and subsequently it has been accepted by the United States, and now is in their use and occupation. In this state of the case are the defendants answerable for the fair and reasonable value of the extra work and materials put upon it? Were the question one of original authority in the Secretary or his agents to contract for a building which would cost more than the appropriation, we should unhesitatingly hold with the cases cited from the Opinions of the Attorney-General (vol. 4, p. 600; vol. 9, p. 19), that he had no power to contract for more work than he could control money to pay for. But such is not the case; here the extra work has been done, and materials furnished under the supposed authority of the chosen agents of the Government, when the contractors were ready and willing to complete the building in strict accordance with their original agreement. The building is made more valuable, permanent, and useful by the extra work and materials bestowed upon it than it would have been had it been completed according to the terms and specifications of the written contract, and we think, upon the plainest principles of natural justice and common equity, the United States are bound to pay the fair and reasonable value of the extra work and materials.

We are aware that this is a delicate doctrine when applied to the United States, which only act through their agents, whose authority is limited by law; but under the broad provisions of the act of February
24 24, 1855, organizing this court, we have jurisdiction over all "claims founded in contracts, either expressed or implied," and a stronger case of implied contract can scarcely be presented. To hold otherwise, under the circumstances of this case, would be to hold that the United States, through their accredited agents intrusted with the supervision of the execution of their contracts, could at their own option put it out of the power of the contractors to fulfill their agreements with the Government by compelling them to depart from the original stipulation in the written agreements, and to perform other and additional labor, which they were not bound under contract to perform, and then escape payment by pleading non-performance. Such a doctrine is abhorrent, and opposed to all the well-settled principles of justice and equity, and cannot be recognized by any court of justice.

Besides, this general doctrine here enforced has been recognized by this court in the case of Fowler *vs.* The United States (3 C. Cls. R., 43). This case, although not in all respects like the one under consideration, bears a strong analogy to it, and in it a contract which exceeded the appropriation was upheld and judgment given in damages for its breach. And in no instance to my knowledge have we declined to give judgment for the claimant when on the grounds of quantum meruit he has shown himself clearly entitled to recover. Any other doctrine would be dishonoring to the Government and often embarrassing to the Executive Departments intrusted with the execution of contracts made under appropriations, which with all the precautions the Departments could exercise in letting them sometimes prove slightly inadequate to their fulfillment.

2d. The second ground of complaint, which is a claim for damages growing out of the misconduct of General Crosman's subalterns, is readily

disposed of. It was the claimant's own folly to obey the orders of those he was not bound to obey, or to suffer delays and losses through the officious intermeddling of parties unknown to the contract. (See Gibbon's Case, 2 C. Cls. R., 420.)

It is true it is admitted by the assistant attorney-general that the conduct of Captain Craig, which General Crosman seems to have indorsed in some instances, was both "unjustifiable and unauthorized," but we cannot hold the United States responsible in damages even for the acts of their own agents, much less of third parties, when the Government took no benefit from them, "for the Government does not undertake to guarantee to any person the fidelity of any of its officers or agents whom it employs since that would involve them in all their operations in endless embarrassment and difficulties and losses, which would be subversive of the public interest." (Story on Agency, section 319.)

On the whole case we reject the claim for damages altogether and award judgment for the extra work actually done and materials furnished, which, according to the estimate of Mr. Fraser, the defendant's own architect, we find, after rejecting all items that may be legitimately referred to the contract, to amount to the sum of $34,225.14, for which judgment will be entered.

IV.—*Dissenting opinion.*

LORING, J., dissenting:

I think the amount of the appropriation in the statute limited the power of the Secretary, and all acting under him, and that neither he nor they could contract beyond it, either in the original contract or by any supplementary contract, for additions and extras.

25 But the appropriation for the building was $146,000, and the contract price $138,000, and this left $8,000, which, on the facts, I think can be appropriated to the extras. I understand the facts to be that the original contract stipulated that all contracts for extras, &c., should be agreed upon in writing between the parties, and that the contractor desired the extras, &c., called for and required should be so agreed upon in writing, and the officers and agents of the Government refused and prevented this.

And upon these facts I think it is not competent for the United States to object that such extras were not "agreed upon in writing." An individual cannot object to the non-performance of a stipulation in a contract when he himself prevented its performance; and think the same rule binds the United States here.

Therefusal to make the agreement in writing was, it is true, the act of their agents, but the United States are liable for the failure or refusal of their officers to perform a contract or any stipulation in it; and it is on that ground that damages are awarded in actions for breach of contract here.

I think, therefore, the claimant is entitled to recover for the extras, &c., required and furnished, and not put in writing, to the amount of $8,000, by which the appropriation exceeded the contract price, exactly as he would have been if such extras, &c., had been agreed upon in writing. And that the United States waived the express contract by accept-

ing the building at its increased cost, I think, is not proved, for that would require the action of Congress, and none is shown; and all that is shown is the action of an Executive Department in entering upon and using a building designed for its use, and that is to be referred to the performance of its own proper official duty, which has no connection with or reference to a contract with the claimant.

It may be that the claimant has been very unjustly dealt with and subjected to great loss, but his application for relief for that must be to Congress, and not to this court, whose power, I think, is limited by the statute making the appropriation.

26 V.—*Judgment of the court.—December* 6, 1869.

At a Court of Claims held at the city of Washington, D. C., on the 6th day of December, A. D. 1869, judgment was ordered to be entered as follows:

The court on due consideration of the premises do find for the claimants, and do order, adjudge, and decree that the said Albert Grant and Darius C. Jackson, partners under the name of A. Grant & Co., do have and recover of and from the United States the sum of thirty-four thousand two hundred and twenty-five dollars and fourteen cents ($34,225.14).

27 VII.—*Motion to correct judgment.—Filed January* 13, 1883.

Now in this case comes Albert Grant, and represents that in the trial of this cause at Dec. term, 1869, the court rendered judgment for plaintiff for less amount than the evidence in the case required and justified, and made an error in such adjudication, that said judgment by said error was for the sum of $14,016.29 less than the amount the evidence showed to be due the plaintiff.

That the United States on the rendition of said judgment immediately appealed the same to the Supreme Court, and before the appeal was reached in Supreme Court withdrew the appeal and paid the judgment.

That plaintiff being advised by counsel that the court could not give him relief under the circumstances applied to Congress for relief and Congress passed an act, entitled "An act for the relief of Albert Grant," which was approved on Jan. 5, 1883, and a certified copy of which is hereto attached and made part of this petition marked "Exhibit A."

That plaintiff claims that he should have had judgment for the additional amount of $14,016.29.

Plaintiff prays the court to re-examine said cause, the entire evidence being on the records of this court, and to render a judgment for plaintiff for the additional sum of $14,016.29, and that as by the provisions of the law, such judgment shall be made a part of the original judgment, nunc pro tunc.

Plaintiff says that he is the sole owner of the said claim on which suit is founded, as appears by the evidence in the case.

ALBERT GRANT, *Plaintiff.*

28 [Private No. 5.]

AN ACT for the relief of Albert Grant.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Court of Claims be, and it is hereby, directed to reopen and readjudicate the case of Albert Grant and Darius Jackson (doing business as A. Grant and Company) upon the evidence heretofore submitted to the said court in said cause (fifth Court of Claims Reports, page eighty); and if said court in such readjudication shall find from such evidence that the court gave judgment for a different sum than the evidence sustains or the court intended, it shall correct such error and adjudge to the said Albert Grant such additional sum in said cause as the evidence shall justify, not to exceed fourteen thousand and sixteen dollars and twenty-nine cents; and the amount by readjudication in favor of the said Albert Grant shall be a part of the original judgment in the cause recorded in the fifth Court of Claims Reports, page eighty.

Approved January 5, 1883.

29 VII.—*Findings of fact and conclusion of law.*

FINDINGS OF FACT.

This case having been heard before the Court of Claims, the court, upon the evidence heretofore submitted to this court in this cause, finds the facts to be as follows:

I.

The Senate Committee on Claims, on or about the 15th February, 1882, made the following report to the Senate:

[Senate Report No. 180, Forty-seventh Congress, first session.]

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 15, 1882.—Ordered to be printed.

Mr. Frye, from the Committee on Claims, submitted the following report (to accompany bill S. 486):

The Committee on Claims, to whom was referred the bill (S. 486) for the relief of Albert Grant, have examined the evidence submitted, and finding that it has been correctly stated in House Report No. 897, Forty-sixth Congress, second session, adopt that as a just and accurate statement of facts, annexing it hereto, and report back the accompanying bill with a favorable recommendation:

The Committee on Claims, to whom was referred the memorial of Albert Grant, having had the same under consideration, beg leave to make the following report:

At the December term, 1868, of the United States Court of Claims, the

memorialist obtained judgment for the sum of $34,225.14 for extra work and material furnished in the erection of a fire-proof store-house at the Schuylkill Arsenal, in Philadelphia, in the year 1867. The memorialist claims that the court, in entering judgment in said cause, made a mistake, having taken Mr. Fraser's report, as architect of the War Department, instead of his evidence in the cause, which would have made the judgment $46,738.86.

Upon the examination of the evidence taken in said cause, it clearly appears that there was no evidence upon which such a judgment could be rendered.

Four witnesses testified to the value of such extra work, and their testimony was in no way contradicted, and was as follows:

Total estimated extras, as per B. Oertly's testimony	$47,038 68
Same, John Fraser's testimony	46,738 86
Same, Allen A. Grant's testimony	48,814 64
Same, Jackson Grant's testimony	50,373 55

The average of this testimony is $48,241.48, showing the court to have made a mistake of $14,016.34.

In the course of the trial it appeared that the witness Fraser, being the Government architect, had, some time previous to giving his testimony in said cause, been called upon by the War Department to make an estimate of the value of extras, and in such estimate had fixed them at the sum of $34,225.14.

30 On the trial of the cause Mr. Oertly testified to the extras as follows (taken from claimant's testimony, Exhibit A, on file with the committee, pages 75 to 77, inclusive):

Item 1. For cutting out and removing 315 cubic feet of concrete footing and replacing same by grouted work of pure cement, at $1 per foot	$315 00
Item 2. For difference common concrete as required by contract, and grouting of pure cement, as required by the Government, on 349 perches of footings, at $7.50 per perch	2,617 50
Item 3. For changing 75 stones placed in walls for iron beams to rest upon, required by the specifications to be 8 by 12 inches, taken out and replaced by stones 8 by 24 inches, and the same taken out and again changed to 8 by 12, as also for taking down the brick walls, securing them, and rebuilding the same by order of the Government officials	$500 00
Item 4. For plastering of basement walls, one coat, 1,722 yards, at 20 cents per yard	344 40
Item 5. For extending projection four inches, and filling in between rafters around the entire building of brick-work, being 37,080 bricks, at $50 per thousand	$1,854 00
Item 6. For 5,000 superficial yards of grouting, 2½ inches thick, spread over floor, in addition to that required for haunches, being of pure cement, at $1.25 per yard	6,250 00
Item 7. For the difference in leveling up the haunches of the arches, for the floors to rest upon, in grout of pure cement, rather than in concrete of lime and sand, as required by contract, amounting to 311 perches, at $10 per perch	3,110 00

Item 8. For difference between laying floor arches in lime, cement, and sand, as required by contract, and laying the same in pure cement mortar, 369,380 bricks, at $6 per thousand 2,216 28

Item 9. For difference between common concrete made of lime and sand for cellar floors, and grouting of pure cement, 212 perches, at $9 per perch 1,908 00

Item 10. For difference in roof, between that as required by contract and as actually built by order of the Government officials, including a change in the iron tie-rods from single 1½ inch round rod to complicated double rods, increasing the number of trusses, drilling purlines, and supporting the same by iron rods encased in gas-pipe, making four complete sets of tie-rods running around the entire building, in making extra hips and valleys, occasioning large increase in material and labor, with other modifications and changes 13,938 48

Item 11. For scuttle to roof, none being required by plans or specifications 75 00

Item 12. For carrying up partition walls to ridge of roof, requiring 37,092 bricks, at $30 ..... $1,112 76
And fitting and cutting to roof 324 lineal feet of wall, at 50 cents per foot 162 00
1,274 76

Item 13. For topping eight chimneys with North River flagging 96 00

Item 14. For transom windows with iron sash and glass 100 00

Item 15. For taking down 31,500 bricks and stone belt-course on west front of building, and relaying and resetting the same (all difficult work), at $30 per thousand 945 00

Item 16. For 50 sets of bolts placed in the walls for roof trusses over court-yard, viz, two bolts and iron plate to the set for clamping brick-work 150 00

Item 17. For taking down four 9-inch beams and replacing the same by four 12-inch girders, viz, placing 12,300 pounds iron beams, at ¾ cent per pound 92 25

Item 18. For building addition walls between old and new building, and placing iron beams for said walls to rest upon, requiring 14,400 bricks at $30 per thousand $432 00
And placing of 1,820 pounds of iron beams, at ¾ cent per pound 13 65
445 65

Item 19. For difference between copper gutters, ridges, valleys, and down-spouts, as required by the Department, and the tin gutters, valleys, spouts, and ridges required by contract 8,608 25

Item 20. For 2,610 pounds additional iron beams in west stairway, not required by the original plans, at 10 cents per pound 261 00

Item 21. For cutting 27 holes for hoisting apparatus, and putting iron eyes, at $6 each 162 00

Item 22. For cutting out brick-work to admit new girders (see Item 17), necessary on account of delay	175 00
Item 23. For placing 700 iron beam-plates not required by specifications, after all the beams had been placed, at 50 cents each	350 00
31 Item 24. For change of hatchway on account of error in drawings, 2 additional beams required, and altering and changing frame work, also making good the brick-work	$150 00
Item 25. For closing four windows opening into basement of old building	100 00
Item 26. For four sets of plank steps to basement, not required by contract	200 00
Item 27. For difference between bedding the brick pavement of the several floors in pure cement, 1½ inches thick, and bedding the same in common mortar, as required by contract, 6,667 yards, at 87 cents per yard	5,800 29
Total	47,038 86

On the trial of the cause, Mr. Fraser, architect of War Department, testified as follows, to wit:

"The amount of my estimate was $34,225.14. I was induced to make this report low understanding that the contractors had large amounts to pay upon the building; supposing that by making it low it would be more likely to be allowed by the Department. Since making my report I have, with Mr. Oertly, reviewed my estimates as to the extra work charged. The paper now shown me, marked "Exhibit A," appended to the deposition of Mr. B. Oertly, in this case, gives the estimate as made by us. I have compared the estimate in my report with the estimate made by Mr. Oertly and myself, of items number 1 to 21 inclusive, and they are identical. I have had occasion to change the amount of my estimate on items number 1 and number 21, inclusive, by adding $6,038.43; the total amount of my present estimate upon these items is $40,263.57. On inspecting the build ing and comparing it with the specifications, plans, &c., I find other items than those before reported by myself; these additional items of extra work are set forth in the amended petition, and numbered from 23 to 27, inclusive. I have made my present estimate from actual inspection of the work, and from comparing it with the contract, plans, and specifications; the work charged for as extra was all done under me, with the exception of items one, two, three, and fifteen; it was done by my order, and with the knowledge of the Government officers; Government officers visited the work daily with me; I was at the building with Colonel Crilly, almost every day, from the time of my appointment."

Nowhere in the evidence can any testimony be found to support a judgment of $34,225.14. No evidence was produced to cut down the amount of the estimates as made by the different witnesses. The court, in rendering judgment, say:

"In respect to the facts which are applicable to the first demand, the United States Assistant Attorney-General, after a most careful examination of the whole testimony in his printed brief, very justly remarks that—

"'It is not our purpose to discuss the evidence which it is alleged establishes the several items of the claimants' demand. The evidence adduced for that purpose may be regarded as sufficient to establish the claimants' right to recover, if the Government is liable to pay, the several amounts the claimants allege they are entitled to receive.'"

The same Assistant Attorney-General who had the case in charge for the United States makes the following statement:

DEPARTMENT OF JUSTICE,
Washington, January 11, 1875.

SIR: Your note to the Assistant Attorney-General, in regard to the claim of A. Grant, has been handed to me, as I had charge of the defense of his suit against the Government in the Court of Claims. Whether the court made a mistake in rendering judgment in Grant's case is rather a matter of inference than of positive knowledge. When the judgment was rendered I supposed the court had made a mistake, and wondered why Grant's counsel did not move for a correction of the judgment. The figures given by the court in the judgment are not to be found in the testimony of any witness, but are taken from a report made by Mr. Fraser before the suit was brought. Mr. Fraser was a witness in the case, and in his testimony he estimates the value of the extra work done by Grant at $46,738.86. This was the lowest estimate made by any of the witnesses.

Very respectfully,

ALEXANDER JOHNSON,
Special Assistant Attorney-General.

Hon. J. C. BURROWS,
House of Representatives.

The Hon. Joseph Casey, then chief-justice of the Court of Claims, makes the following statement relative to the error of the court:

WASHINGTON, D. C., *January* 13, 1875.

DEAR SIR: I have yours of yesterday. I have carefully re-examined your case in the Court of Claims, for compensation for building
32 a fire-proof storehouse at the Philadelphia Arsenal for the United States. And in connection with my memoranda, kept at the time, two items of claim were made: 1st, about $50,000 for extra work; 2d, near same amount for damages, for delays, losses, and interest on account of changes, &c.

The original estimate by the Government architect for the changes and extra work was something over $34,000.

The survey and actual calculation of the cost and value of this work at the contract prices, after it was done, as made by four different architects, was an average of over $48,000, that of the Government architect being $47,000.

The court, after trial, rejected the claim for damages, and allowed that for extra work.

The mistake in the amount of the judgment, which should have been for $47,000, arose, I am sure, from adopting the architect's prior estimate instead of his subsequent actual calculations of the cost of the work.

My attention was not called to this error until after the judgment had been certified and paid.

I am quite sure that you should have had $14,000 in addition to the judgment rendered in the case for compensation alone, without any interest or damage.

I am, very respectfully, yours,

JOS. CASEY.

Capt. A. GRANT.

II.

The court at the trial of this cause reported in the fifth volume of the Court of Claims Reports gave judgment for a different sum than the court intended.

III.

In order to correct such error and adjudge to said Albert Grant such additional sum in this cause as the evidence justifies, he should receive a further sum of fourteen thousand and sixteen dollars and twenty-nine cents.

CONCLUSION OF LAW.

On the foregoing facts the court decides as conclusion of law that the claimant is entitled to recover of the defendants the sum of fourteen thousand and sixteen dollars and twenty-nine cents.

VIII.—*Opinion of the court.*

DAVIS, J., delivered the opinion of the court:

The act of July 13, 1866, appropriated $146,000 for the erection of a fire-proof building in Philadelphia. (14 Stat. L., 92.) The contract for the construction of the building was awarded to the claimants, and a written contract therefor was made in the form required by law.

During the progress of the work sundry changes were made in the drawings and specifications by the defendants' agents, and the work was done in accordance with the changes. After it was completed the claimants brought suit to recover for the extra work.

There was a large amount of testimony introduced bearing upon its value. Among the documents in the case was a report from Mr. Frazer, the supervising architect charged with the construction of the building, in which he referred in detail to the items of extra work, and estimated them at $34,225.14. This report, upon principles of evidence which this court has invariably adhered to, was not admissible as proof of the results reached by Frazer. There was also in the case testimony from Frazer and other experts as to the worth of the extras. In his evidence Frazer fixed their value at a larger sum than he had stated in his report, and explained wherein the difference consisted, and why he had originally estimated them at the
33 smaller sum. The court gave judgment for the exact sum named in Frazer's letter. There is in the record no evidence on which that particular sum could apparently be based except the statement in that letter.

The claimant was then in arrears to his men, and needed the money, and was paid and accepted the amount of the judgment. He then went before Congress, alleging that there was an error of fact in the judgment—that the court intended to give him the amount of Frazer's estimate as stated in the evidence, and that by mistake it took the estimate in the letter.

The matter was brought before successive Congresses without result until the death of Judge Milligan, who had given the opinion. Chief Justice Casey meanwhile had retired; and as the court which had rendered the judgment was rapidly changing, the claimant apparently thought proper to obtain and lay before the committee the views of Chief Justice Casey as to the merits of his request. Finally, a House committee reported a bill in his favor, accompanying it with a written report, which we shall consider later.

The bill as enacted by Congress reads as follows:

AN ACT for the relief of Albert Grant.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Court of Claims be, and is hereby, directed to reopen and readjudicate the case of Albert Grant and Darius Jackson (doing business as A. Grant and Company) upon the evidence heretofore submitted to the said court in said cause [Fifth Court of Claims Reports, page eighty], and if said court in such readjudication shall find from such evidence that the court gave judgment for a different sum that the evidence sustains or the court intended, it shall correct such error and adjudge to the said Albert Grant such additional sum in said cause as the evidence shall justify, not to exceed fourteen thousand and sixteen dollars and twenty-nine cents; and the amount by readjudication in favor of the said Albert Grant shall be a part of the original judgment in the cause recorded in the Fifth Court of Claims Reports, page eighty. [Approved January 5, 1883.]

The act is as remarkable for what it omits as for what it directs. While directing us on one line "to reopen and readjudicate the case" upon the former evidence, on the next line it deprives us of the power of a general readjudication, and orders us only to inquire whether there was an error in the Government's favor. Still further, it not only authorizes us to inquire whether the evidence supported the former judgment in this error, but it also confers upon us the remarkable power to determine whether the court which gave the judgment in 1873 intended to give a different judgment. Thus the act, in fact, if not in form, directs us in our readjudication to base our results, not upon our own conclusion from the evidence, but upon our opinion as to what the court, as constituted in 1873, intended to do.

In the revolutions of time no judge who took part in the judgment in 1873 takes part in the judgment in 1883. Death has taken away Chief Justice Casey and Judges Milligan and Peck, the Chief Justice and Judge Peck having each previously retired. Judge Loring, who is still enjoying a vigorous old age, dissented from the judgment; and ill-health has deprived us of Judge Nott's assistance during the whole of this term.

The report of the House committee to which we have referred was

adopted verbatim by the Senate committee as a reason for the passage of the bill which was recommended and passed. It explains the purposes of Congress in this unusual legislation. It reviews the case. It affirms that the evidence shows that the court made a mistake of $14,016.34. It declares that nowhere in the evidence can any testimony be found
34 to support a judgment of $34,225.14, and it asserts that Chief Justice Casey was of opinion that there was an error in the amount of the judgment; that it should have been for $47,000, and that the error arose from adopting Frazer's prior estimate, instead of the actual calculation which he gave with his testimony.

The committees of Congress having reached these positive conclusions as to the effect of this evidence, the act which they recommend, and which passed, directs this court to examine it, and if we shall be of opinion that there was an error in the judgment against the claimant, to correct the error, provided the correction shall not exceed the sum stated in the act.

We cannot say with the committee that there was no evidence upon which the judgment could be rendered; on the other hand, in the conflicting proof there is abundant evidence to support a judgment for the further amount indicated by the act; and we are of opinion that so far as the judgment actually rendered rested on Frazer's report to the Department it had no foundation in the evidence.

As to the second subject referred to us, there is convincing internal evidence in the proof that the court intended to adopt the views of Mr. Frazer, and that it did practically adopt the views which he expressed in his letter to the Department. The report of the committees to the Houses of Congress goes further, and assumes as a proved fact that the court intended to adopt the views expressed by Frazer in his evidence, and by mistake took those stated in his letter. Still further, the committee stated to Congress the sources from which they derived this conviction, viz, that Chief-Justice Casey had so stated in a form which the committee accepted as truth. On this report they recommended the passage of the accompanying bill, and Congress adopted their views and enacted it.

This act directs us to ascertain the intent of the parties from the evidence. We may not inquire what Chief-Justice Casey or Judges Peck or Milligan in their lifetime said of it. We are not empowered under the terms of this act even to ask Judge Nott, if he were here, what his intent was when he assented to that judgment. We cannot turn to Judge Loring for information, not only because the statute does not permit it, but also because he dissented and took no part in the judgment. We must determine this delicate fact from the old record alone.

If there were no conflict of evidence as to the value of this extra work, and the court had by clerical error rendered a judgment for a wrong amount, the evident intent of Congress by the passage of such an act would be this: to have this court pass upon the evidence and enter a judgment in accordance with its own convictions. But such is not this case.

This court is directed to ascertain the intent of four judges ten years since, not in a matter where there is a palpable clerical error, but in a matter in which those judges exercised their discretion in weighing and balancing conflicting evidence; and it is forbidden to seek information on the point to be adjudicated from the only sources of absolute knowledge. If, therefore, we cannot learn the purposes of Congress from the recom-

mendations of its committees on which its action is based, but one answer can be given to the question put to us: The only proof of the intent of the judges is in the judgment they rendered; and even if we should derive a different result from weighing the proof we could not say that they intended to estimate it as we do.

This answer is so natural, so obvious, so inevitable that Congress never could have intended to send this case here to receive it. The reports
35 of their committees, upon which they based their action, show exactly what they did intend. They were led to believe by the declarations of Chief-Justice Casey that an error had been inadvertently committed by which the claimant had been injured and the intent of the court had been frustrated. They did not feel willing, or perhaps competent, to go through the record and ascertain whether it conformed with the recollections of Chief-Justice Casey. They did not care to right the claimant's alleged wrongs till that should be done, and they sent the case here for that purpose.

Construing the act in this light we think we must limit ourselves to inquiring whether the evidence shows anything inconsistent with the conclusions which Congress derived from the committees' reports. We cannot say that it does; on the contrary, as we have already said, there is in this conflicting evidence proof to sustain those conclusions.

On both points we have felt constrained to find for the claimant. We think it proper to add that our findings are not to be taken as evidence of the conclusions which we should have reached had the action of Congress left a larger measure of discretion to the court. We express no opinion on the general merits of this controversy.

The judgment of the court is that the claimants recover of the defendant the sum of fourteen thousand and sixteen dollars and twenty-nine cents.

36 IX.—*Judgment of the court, June* 11, 1883.

At a Court of Claims held at the city of Washington, D. C., on the 11th day of June, A. D. 1883, judgment was ordered to be entered as follows:

The court, on due consideration, of the premises, find for the claimant, and do order, adjudge, and decree that the said Albert Grant do have and recover of and from the United States the sum of fourteen thousand and sixteen $\frac{29}{100}$ dollars ($14,016.29).

37 X.—*Application of defendants for and allowance of appeal.*

From the judgment rendered in the above-entitled cause on the 11th day of June, 1883, in favor of claimant, the defendants, by their Attorney-General, on the 18th day of August, 1883, make application for and give notice of an appeal to the Supreme Court of the United States.

THOMAS SIMONS,
Asisstant Attorney-General.

Filed August 18, 1883.

AT CHAMBERS.

Allowed.

C. D. DRAKE,
Chief Justice.

38 XI.—In the Court of Claims.

ALBERT GRANT, SURVIVING PARTNER OF Albert Grant and Darius C. Jackson, doing business under the firm-name of A. Grant and Company,

vs.

THE UNITED STATES.

No. 3697.

I, John Randolph, assistant clerk of the Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the opinion of the court and the dissenting opinion, and the judgment of the court, entered on the 6th day of December, A. D. 1869; of the motion of claimant to correct judgment, filed January 13, 1883; of the findings of fact and conclusion of law thereon by the court; of the opinion of the court and final judgment of the court entered June 11, 1883; of the application of defendants for allowance of appeal to the Supreme Court of the United States, and the allowance of same by Chief-Justice Drake.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims, at Washington City, this 13th day of October, 1883.

[SEAL.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 1144. The United States, appellant, vs. Albert Grant, surviving partner of Albert Grant and Darius C. Jackson, doing business under the name of A. Grant & Co. Court of Claims. Filed 13th October, 1883.

110-225

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JAMES H. McKENNEY, CLERK

SUPREME COURT OF THE UNITED STATES.

THE UNITED STATES
vs.
ALBERT GRANT ~~& CO'Y~~ } No. 1144.

Motion to Dismiss or Affirm.

The defendants in error move the Court to dismiss the appeal for want of jurisdiction, uniting therewith a motion to affirm the judgment under the 6th rule of the Court.

P. PHILLIPS,
R. P. LOWE,
W. HALLETT PHILLIPS,
For Motion.

Grounds of Motion.

On 6 December, 1869, the Court of Claims rendered a judgment in favor of Grant & Co. for $34,225.14.

No appeal has been prosecuted, and the appeal is now barred.

Grant & Co. then petitioned Congress to allow the Court to open its judgment, on the ground of error in the sum allowed. A favorable report was made by the Senate Committee on Claims, which is inserted in the findings. In this it is said:

> "The memorialist claims that the Court, in entering judgment on said claim, made a mistake, having taken Mr. Fraser's report instead of his evidence in the cause, which would have made the judgment $46.738.86.
>
> "Upon examination of the evidence it clearly appears that there was no evidence upon which such a judgment could be rendered."

The report also contains a letter from, Mr. Casey, the chief Justice of the Court, when the case was adjuged, declaring that the Court had rendered a different judgement from what it intended.

The committee reported a bill, which became a law January 5, 1883, as follows:

> "The Court of Claims be, and is herely directed to open and readjudicate the case of Albert Grant and Darius Jackson, (doing business as A. Grant & Company) upon the evidence heretofore submitted to the said court in said cause (5 Court of Claims Reports page eighty) and if said court in said readjudication shall find from such evidence that the court gave judgment for a different sum than the evidence sustains, or the court intended, it shall correct such error and adjudge to the said Albert Grant such additional sum in said cause as the evidence shall justify, not to exceed fourteen thousand and sixteen dollars and twenty nine cents; and the amount by readjudication in favor of said Albert Grant shall be a part of the original judgment re-

corded in the fifth Court of Claims Reports page eighty."

On a petition filed to amend the former judgment the court gave an additional allowance of $14,016.29, the sum provided for in the act.

The findings of fact are—

"That the court, at the trial of the cause reported in fifth volume of the Court of Claims Report, gave judgment for a different sum than the court intended.

"In order to correct such error and adjudge to said Grant such additional sum as the evidence justifies, he should receive the further sum of $14,016.29."

It is from this judgment the appeal is prosecuted.

We deny that any appeal is allowed under the act.

Its whole object was to allow the court to amend its former judgment, if satisfied that the sum given was through mistake and error.

The amendment was to be allowed if the evidence was sufficient to satisfy *that court* that a mistake had been committed in its former judgment. *That court* having so held, its determination of this question of fact is final.

The act, in providing that the new allowance should be "a part of the original judgment" of 6th Dec'r, 1869, plainly shows that it was not intended to give an appeal.

In other words, the court was authorized to enter a judgment *nunc pro tunc*, and in point of law there is but one judgment for two amounts.

No new evidence was or could be submitted, and the whole power of the court was confined to the ascertainment of the mistake.

But if we are mistaken in this view, it is clearly manifest that the judgment should be affirmed.

The record presents nothing but the finding of facts heretofore cited.

Appeals from the Court of Claims, under the act of 1863, are made subject "to such regulations as the Supreme Court may direct."

By the rules adopted, the transcript is to contain, *inter alia*, "a finding of facts by the court, and the conclusions of law on said facts on which the court found the judgment. The finding of fact and the conclusions of law to be stated separately and certified as part of the record. The facts so found are to be the ultimate facts or propositions which the evidence shall establish in the nature of a special verdict, and not the evidence on which these ultimate facts are founded."

The facts found in this case are conclusive upon this court, and leaves to it nothing to be enquired into.

The Abbotsford, 98 U. S., 440.

As there is no question of law presented for the action of the court, if the appeal is not dismissed, the judgment should be affirmed.

P. Phillips,
R. P. Lowe,
W. Hallett Phillips,
For Motion.

110-225

OFFICE SUPREME COURT U.S.
FILED
DEC 17 1883
JAMES H. McKENNEY, Clerk

In the Supreme Court of the United States.

MOTION TO DISMISS OR AFFIRM.

THE UNITED STATES
vs.
ALBERT GRANT. } No. 1144.

BRIEF OF THE UNITED STATES.

In the Supreme Court of the United States.

MOTION TO DISMISS OR AFFIRM.

THE UNITED STATES
vs.
ALBERT GRANT. } No. 1144.

BRIEF OF THE UNITED STATES.

In 1869 Grant & Co. recovered $34,225.14 in the Court of Claims. The United States appealed, but at Grant's request withdrew the appeal, and the judgment was paid. He has never claimed before the court, prior to the passage of the act approved January 5, 1883, that the judgment was in any respect *erroneous*.

The act is as follows:

> That the Court of Claims be, and it is hereby, directed to reopen and readjudicate the case of Albert Grant and Darius Jackson (doing business as A. Grant and Company), upon the evidence heretofore submitted to the said court in said cause (fifth Court of Claims Reports, page eighty), and if said court in such readjudication shall find from such evidence that the court gave judgment for a different sum than the

> evidence sustains, or the court intended, it shall correct such error, and adjudge to the said Albert Grant such additional sum in said cause as the evidence shall justify, not to exceed fourteen thousand and sixteen dollars and twenty-nine cents; and the amount by re-adjudication in favor of the said Albert Grant shall be a part of the original judgment in the cause recorded in the fifth Court of Claims Reports, page eighty.

Under this authority the court proceeded to readjudicate the case, and on June 11, 1883, adjudged to Grant the additional sum of $14,016.29. On the same day it adjourned for the term, and did not again convene until December 3d.

The United States appealed in August, filed the transcript of record in this court on October 13th, and received a copy of this motion on November 26th, all, as will be seen, during the vacation of the Court of Claims.

It will be fatal to the motion to dismiss if there be reasonable ground of controversy upon either branch of it, and that, as we believe, will abundantly appear.

1. The motion to dismiss.

This is put upon the ground that no appeal is allowed by the special act above, and that the language of the act indicates that it was not intended to give an appeal.

Section 707 of the Revised Statutes has the following provision:

> An appeal to the Supreme Court shall be allowed on behalf of the United States from all judgments of the Court of Claims adverse to the United States.

The special act requires the court to "readjudicate," and in case of error found to "adjudge" such additional sum, &c.

Whether under these provisions the result of the action of the court, taken alone or in combination with the original proceeding of 1869, does not form a judgment adverse to the United States within the true intent of section 707 seems hardly open to serious controversy since the decision in Vigo's case (21 Wal., 648).

This case is placed by the special statute in the regular course of the business of the court; and the provision that any judgment given "shall be a part of the original judgment," &c., was not intended to *bar any* appeal which might otherwise be advisable.

The case involves, as will be seen further on, the vital question whether the court has obeyed the mandate of the special act. The appeal was necessary in order to save the defendants' rights, if for no other reason. If the propriety of that remedy be questioned, the defendants' right to *some remedy* cannot be; nor can it be denied that the question is a *serious* one, and one in which the defendants should have the fullest opportunity for discussion, and the best judgment of this court.

2. The motion to affirm.

This rests upon the ground that the facts found are conclusive, and present no question of law. We shall endeavor to show that this is open to serious controversy.

1. The first finding consists of the report of a Senate committee made February 15, 1882.

The special act directed the court to readjudicate the

case "*upon the evidence heretofore submitted to the said court in said cause*," and by other expressions it strictly confines them to that evidence alone in such readjudication.

The record shows on its face, therefore, that, contrary to such direction, they have gone outside of the *prescribed evidence*, and considered as such other matter, which they have incorporated in their findings; matter which even in the absence of the express restriction of the act would be incompetent.

In the opinion the reason supposed to justify this course is indicated, and the defendants do not object to a reference thereto for explanation, provided they have the same privilege in respect to other parts of the record calling for explanation, but they contend that notwithstanding the statements in the opinion it was error in the court to consider the report as evidence in this case *for any purpose*, and that this question is one which should not be disposed of upon such a motion as this.

2. The second finding is that the court in 1869 "gave judgment for a different sum than the court intended."

This, on its face, would justify the inference that the court of 1883 found in the evidence of 1869 proof that the court of 1869 *by some inadvertence* entered judgment for $34,225.14, when they intended to enter it for a greater amount. But the court below did not intend this, as is seen in the following extract from the opinion:

> If there were no conflict of evidence as to the value of this extra work and the court had by clerical error rendered a judgment for a wrong amount, the evident intent of Congress by the passage of such an act would be this: to have this court pass upon the

evidence and enter a judgment in accordance with its own convictions. *But such is not this case.*

This court is directed to ascertain the intent of four judges ten years since, not in a matter where there is a palpable clerical error, but in a matter in which those judges exercised their discretion in weighing and balancing conflicting evidence; and it is forbidden to seek information on the point to be adjudicated from the only sources of absolute knowledge. If, therefore, we cannot learn the purposes of Congress from the recommendations of its committees on which its action is based, but one answer can be given to the question put to us. *The only proof of the intent of the judges is in the judgment they rendered;* and even if we should derive a different result from weighing the proof, we could not say that they intended to estimate it as we do.

These and other expressions demonstrate, as we submit, that the court below inadvertently framed its second finding in such terms as to convey a meaning opposite to that intended; for the opinion clearly shows that the actual conclusion of the court was that the court of 1869 *intending to give judgment for* $34,225.14, committed an *error* (the only one found) in considering as evidence a certain document which the court of 1883 regard as incompetent.

How this finding should be rectified will be hereafter discussed.

3. In the third finding the court say, in substance, that the evidence *corrected* as above justifies the adjudication of a certain additional sum to the claimant. But while this, as well as the second finding, on its face indicates compliance with the requirements of the special act, *it is explicitly declared in the opinion that these findings are*

based upon a certain restricted construction of those requirements, which was adopted by the court, and are not to be taken as evidence of the conclusions they should have reached if they had construed the act in the manner contended for by the defendants.

The court say:

> Construing the act in this light, we think we must limit ourselves to inquiring whether the evidence shows anything inconsistent with the conclusions which Congress derived from the committee's reports. We cannot say that it does. On the contrary, as we have already said, there is in this conflicting evidence proof to sustain those conclusions.
>
> On both points we have felt constrained to find for the claimant. *We think it proper to add that our findings are not to be taken as evidence of the conclusions which we should have reached had the action of Congress left a larger measure of discretion to the court. We express no opinion on the general merits of this controversy.*

The positions of the defendants below were as follows:

First. There was no clerical error; or in other words the court of 1869 intended to enter judgment for $34,225.14. In this the court below concurred, as the opinion shows.

Second. That to readjudicate in favor of Grant, the court must find from the evidence (*all of it*) submitted in 1869, that the court in that year gave judgment for a different (less) sum than *that evidence* sustains.

Third. That in case the court should so find for the claimant, the additional sum adjudged must be justified by the entire evidence as aforesaid.

In short the defendants insisted that it was the duty of the court under the act *and within its limitations* to try the case upon the merits, regarding as well the evidence in favor of the defendants as that for the claimants, and deciding the question of additional recovery according to the weight of the evidence so considered.

There was surely nothing unjust or unreasonable in this construction, and we submit that it not only expresses the true intent of the special act, but that it is more consistent with what Congress, having due regard to the rights of both parties, should be presumed to have intended.

The court below could not find this broader, and as we think juster, meaning in the act. It thought apparently that the case was opened to be investigated, not upon the merits, but in the interest of the claimant only, with a view of finding some ground for awarding him a further recovery. Thus it said:

> The act is as remarkable for what it omits as for what it directs. While directing us on one line "to reopen and readjudicate the case" upon the former evidence, on the next line it deprives us of the power of a general readjudication, and orders us only to inquire whether there was an error in the Government's favor.
>
> Construing the act in this light, we think we must limit ourselves to inquiring whether the evidence shows anything inconsistent with the conclusions which Congress derived from the committees' reports.

It must be apparent that (as the court acknowledges) the findings are based upon consideration of a part only

of "the evidence heretofore submitted," and of certain extraneous matters not mentioned in the act. If this was erroneous the court below should be required to proceed in accordance with the special act, and enough has been said to prove that the controversy on this point is of such gravity that the defendants should not be required to engage in any further discussion of it upon this motion.

It only remains to consider the objection which may be urged—that the opinion is no part of the record, and cannot be used to explain the findings.

While this may be generally true, this court, we submit, cannot overlook the fact that the main dispute here is whether the Court of Claim has obeyed the direction of Congress, and that the defendants have a right to be heard upon that question. If the technical record does not properly present it that is not their fault. Their requests for findings, according to existing rules, do not go into the record, and they had no opportunity to apply to the court below for any purpose before the record was transferred to this court. The opinion, if not receivable under the circumstances to show that the second and third findings are to be taken as limited to the particular construction of the special act adopted by the court, is at least proof that the court declined to give a certain effect to the act, which if reasonable most surely entitles the defendants to relief. This might probably be obtained by mandamus, if for any reason the remedy by appeal were not available, but there seems to be no reason why the present record should not be perfected if deemed necessary by an order directing the court

below to amend the findings so as to show the construction of the act upon which they are based.

The defendants had intended to apply seasonably to this court for directions to the court below to make such further findings as may be required to bring the question of the conformity of its action with the legislative directions plainly upon the record; and they would so move now but that it seems apparent that the present motion should be denied, because the claimant has not shown that manifest right which is required for *dismissal and affirmance.*

S. F. PHILLIPS,
Solicitor-General.
THOMAS SIMONS,
Assistant Attorney-General.

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110-225

DEC 21 18

IN THE

SUPREME COURT OF THE UNITED STATES.

THE UNITED STATES
vs. } No. 1,144.
ALBERT GRANT.

Brief in reply to the Solicitor General

In opposition to the motion to affirm, the Solicitor General maintains that the act of Congress directed the court to "*open and readjudicate the case upon the evidence heretofore submitted.*"

But this is not all of the act. The purpose of this direction was to enable the court to ascertain one of two things: *First*, whether the court gave judgment for a different sum than the evidence sustains; and *Second*, whether it gave judgment for a different sum than *the court intended.*

Now the finding in the case before us is—that the court, upon the trial of this case reported in 5th volume of the Court of Claims Reports, gave judgment for a different sum than *the court intended.*

And to correct such error the court adjudges that Grant should receive the further sum of $14,016.29.

This finding is as conclusive in this court, as if the fact had been agreed upon by the parties and their agreement had been embodied in the Record.

U. S. vs. *Pugh*, 99 U. S., 271.

The Solicitor-General insists that "the Court did not intend this," and cites, for the purpose of his argument, an extract from the opinion found in the Record.

Our reply is that on the question submitted the opinion cannot be referred to overrule the express terms of the finding.

The Annie Lindsley, 104 U. S., 187.

The rules in reference to appeals from the Court of Claims provide that they shall be heard upon the following record, *and none other*. A transcript of the pleadings in the case, of the final judgment or decree of the court, and of such interlocutory orders, rulings, judgments and decrees as may be necessary to a proper review of the case. 2. A finding of the facts, and a separate statement of the conclusions of law upon which the court founds its judgment. The same rule is applicable to appeals in admiralty.

The Adriatic, 103 U. S., 731;

In *United States* vs. *Fisher*, No. 53, present term, the court refused to consider the opinion of the court.

The opinion criticises the act; whether justly or not it is immaterial to consider.

In reference to the action of Congress it is said therein: The reports of their committees, upon which they based their action, show exactly what they did intend. They were led to believe, by the declarations of Chief-Justice CASEY, that an error had been inadvertently committed, by which the claimant had been injured, and the *intent of the court frustrated.*

Construing the act in this light, we think say the court. "We must limit ourselves to inquiring whether the evidence shows anything inconsistent with the conclusions which Congress derived from the committees' reports. We cannot say that it does; on the contrary, as we have already said, there is in this conflicting evidence proof to sustain those conclusions. On both points we have felt constrained to find for the claimant."

What these findings are, we have already stated.

No finding of any fact material to the appellant, was asked for and refused. It is said that no opportunity was afforded to make such request "before the record was transferred to this court."

There is no warrant for such an excuse. The parties were bound to be in court when the judgment was rendered, and it was then he should have applied for such findings as the nature of his case warranted.

Nor is there any ground for the suggestion that the court would now enter an "order directing the court below to amend the findings so as to show the construction of the act upon which they are based."

The act required the court to ascertain whether the judgment was rendered for a different sum than the court intended, and the finding is affirmative of that fact, no other finding can ever weaken the effect of the fact they found, which is the basis of the present judgment.

P. PHILLIPS,
R. P. LOWE,
W. H. PHILLIPS.